

# The Indiana Prosecutor

Published by the  
Indiana Prosecuting Attorneys Council  
October 2003



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## RECENT DECISIONS

### DRIVERS OF SUV's WITH TRUCK PLATES NEED NOT WEAR SEATBELTS

*Owen v. State*

N.E.2d

(Ind. Ct. App. 9/30/03)

As Jon Owen drove by a Kendallville seatbelt checkpoint in his Blazer an officer noticed that he was not wearing his seatbelt. Owen admitted to the officer who stopped him that he did not regularly wear his seatbelt because his Blazer was plated as a truck. The trial court held that Owen's Blazer was not a truck and that Owen was properly cited by the police for a violation of Indiana's seatbelt law. Owen appealed.

Indiana's seatbelt statute requires that the driver and front-seat passenger in a "passenger motor vehicle" have their seatbelts fastened while the

vehicle is in forward motion. School buses, private buses, trucks, tractors and recreational vehicles are statutorily excluded from this requirement, however. A "truck" is defined in I.C. 9-13-2-188 as "a motor vehicle designed, used or maintained primarily for the transportation of property."

The State argued that SUV's such as the Blazer Owen drove was intended to haul passengers and was not a vehicle exempt from the seatbelt statute. Owen countered that his Blazer was designed primarily for the transportation of property.

The Indiana Court of Appeals in this September 30, 2003, decision concluded that the statutory definition of a truck did not exclude SUV's. If, therefore, an SUV bears a license plate designated as a truck plate the driver of that vehicle is driving a truck, the Court said. Because Owen's SUV was plated as a truck, the seatbelt statute did not apply. Owen's conviction was reversed.

### SUPREME COURT DENIES TRANSFER IN *HANNOY V. STATE*

On October 23, 2004, despite petitions for transfer filed by both parties, the Indiana Supreme Court denied transfer in the case of Elis Hannoy. The original appeal in the *Hannoy* case was published by the Court of Appeals on June 10, 2003.

The facts of the case are as follows. On August 11, 2000, Elis Hannoy drove his minivan across the center line on Fall Creek Road in Marion County and collided head on with a car occupied by John and Flora Wells. Both of the occupants of the Wells' vehicle died as a result of injuries sustained in that crash. Following the policy of the Marion County Sheriff's Department at that time, Deputy

Brian Dixon was dispatched to the hospital to which Hannoy had been transported to request a blood draw. Dixon did not ask Hannoy's consent, nor did any law enforcement officer have probable cause to believe Hannoy was intoxicated at the time the blood was drawn. The results of tests run on that blood sample revealed Hannoy's blood alcohol content to be between .194 and .206%.

The Sheriff's Department in developing this policy, interpreted I.C. 9-30-7 to automatically authorize obtaining blood, by force if necessary, from the driver of any car involved in a crash resulting in serious bodily injury or death. The Court of Appeals held that nothing in 9-30-7 authorized Deputy Dixon to forcibly take a blood sample from Hannoy if consent had not been obtained. Rather, the Court said, as with I.C. 9-30-6, civil penalties apply upon a driver's failure to consent. Deputy Dixon's failure to comply with Indiana's implied consent laws meant that the implied consent laws could not be invoked to justify the drawing of Hannoy's blood, the Court said.

The State argued on appeal that the drawing of Hannoy's blood fit within the "special needs" exception to the generally recognized search warrant requirement. Judge Barnes, writing for the Court of Appeals, said that the special needs exception does not apply to law enforcement-related searches.

The State also argued that Hannoy did not resist the draw of his blood and that this failure to resist constituted "actual consent". The Court of Appeals did not buy this argument either. Consent must be freely and voluntarily given, the Court said. A consent is invalid if procured by fraud, duress, fear, intimidation or where merely a submission to the supremacy of the law. Hannoy's failure to resist after Deputy Dixon said "You have been involved in a car accident, it is my duty to check your blood for alcohol," can only be characterized as a mere submission to the supremacy of the law, the Court said. The Court concluded that consent in this case was not freely and voluntarily given.

About an hour after the blood draw pursuant to Deputy Dixon's request, the hospital drew blood

for diagnostic purposes. The test results on that blood showed the defendant's BAC between .182 and .193%. The results of that test were properly admitted into evidence, the Court said. The results of the hospital blood draw will be admissible in the event Hannoy is retried.

